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In the
Supreme Court of the United States
October Term, 1997

CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT,
Petitioner

v.

GARRET F., A MINOR BY HIS MOTHER AND NEXT FRIEND, CHARLENE F.,
Respondent

ON WRIT OF *CERTIORARI*
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF *AMICUS CURIAE* OF NATIONAL SCHOOL BOARDS ASSOCIATION IN SUPPORT OF PETITIONER

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Both parties have consented to the filing of this brief.[1]

Consents are on file with the Clerk.

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[1] This brief was written by National School Boards Association (NSBA) who is *amicus curiae* before this Court and not in any part by counsel for either party. No person or entity other than NSBA has made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF THE CASE

When the Respondent, Garret F., was four years old, he was involved in a motorcycle accident and suffered a spinal cord injury. Although his mental abilities were unaffected, he was left quadriplegic and ventilator dependent. Garret has required a personal attendant within hearing distance of him at all times to provide for his health care needs. From kindergarten through fourth grade, Garret's parents provided a nurse to attend to his medical needs while in school. Garret's daily health needs while in school include urinary bladder catheterization about once a day, suctioning his tracheostomy as needed, providing food and drink on a regular schedule, repositioning, and ambu bag administration if the ventilator malfunctions. In addition, the nurse is responsible for ventilator settings checks, blood pressure monitoring, and bowel disimpactation in cases of autonomic hyperreflexia. When Garret began fifth grade, the parents requested that the school district provide the nursing services while he was attending school. The school district refused to provide the services on the grounds it

was not obligated to provide continuous one-on-one nursing services. The parents brought an administrative action based on the Individuals with Disabilities Education Act (IDEA) and Iowa's special education laws. An administrative law judge ruled that the school district was required to provide the nursing services. The school district appealed to the U.S. district court. The district court granted summary judgment for the parents on the grounds that the services provided to Garret are "related services" which the school district is required to provide under IDEA, rather than excluded "medical services."

The school district appealed to the Eighth Circuit, arguing that the nursing services provided to Garret are medical services, not for either diagnostic or evaluation purposes, and, therefore, excluded from coverage under IDEA. The court of appeals panel affirmed the district court's decision, holding that the nursing services provided to Garret are related services within the meaning of IDEA. The court stated that the issue of whether the services are related or medical is controlled by *Irving Independent School*

District v. Tatro, 468 U.S. 883 (1984). The court held that the services provided to Garret are related services, not medical services, because the services could be provided by a nurse or layperson. It read *Tatro* as requiring a court to find supportive services are related services unless the services are of the kind that only a physician can provide.

SUMMARY OF THE ARGUMENT

In addition to the special education and related services Cedar Rapids provides, Garret is seeking the district provide, at its expense, extensive medical services to suit his special needs. Specifically, he needs a nurse in his vicinity at all times to provide him with: urinary bladder catheterization once a day; care for, suctioning and changing his tracheotomy tube; ventilator management (manually pumping an air bag attached to his tracheotomy tube when the ventilator is blocked (ambu bagging)), and attending to the ventilator in the event of a malfunction or an electrical problem; recognition of, and emergency procedures in the event he experiences autonomic hyperflexia. Garret is

ventilator dependent and requires constant assessment and monitoring. Without this assistance Garret could suffer respiratory distress and be in a life-threatening medical condition.

Amicus agrees with Petitioner that this service is beyond the scope of the IDEA as a "medical service" even though it is not required to be performed by a physician. It is a constant, complex and urgent service which is beyond the scope of "school health services". Schools lack adequate human and financial resources to fulfill a mandate for health services that transcends their traditional educational mission.

INTEREST OF *AMICUS*

National School Boards Association (NSBA), is a not-for-profit federation of this nation's 49 state school boards associations, the Hawaii State Board of Education, and the boards of education of the District of Columbia, the U.S. Virgin Islands and the Commonwealth of Puerto Rico. Founded in 1940, NSBA represents the nation's 97,000 school board members, who, in turn, govern the over 15,000 local school districts that serve more than

40 million public school students -- approximately 90 percent of all elementary and secondary students in the nation.

Each of the school districts in this nation receives or is eligible to receive federal financial assistance under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* Because recipients of federal funds under the IDEA are obligated to comply with certain conditions specified in the Act and its accompanying regulations, the subject of this case raises issues of great importance to school districts across the country.

ISSUE PRESENTED FOR REVIEW

Whether a school district is required to pay for continuous, complex, life sustaining, one-on-one nursing services for a disabled student under the Individuals with Disabilities Education Act.

I. INTRODUCTION

In 1975, Congress enacted the Education for All Handicapped Children Act, Pub. L. No. 94-142, 89 Stat. 775 (1975) (codified with subsequent amendments at 20 U.S.C. §§ 1401-1485 (1994) ("EAHCA"), with the laudable goal of

assuring that every disabled child will receive "special education and related services" at public expense. In 1990, Congress amended the EAHCA and renamed it the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* ("IDEA"). Congress amended and reauthorized the statute again in 1997. The IDEA requires states, as a condition of receiving federal special education funds, to ensure that schools provide a free appropriate public education to all eligible children with disabilities. 20 U.S.C. § 1412(2); 34 C.F.R. §§ 300.121, 300.1. In addition to providing special education and related services, states must also ensure that all eligible children, to the maximum extent possible, are being educated with non-disabled students in the least restrictive environment.

If a child is eligible for IDEA services, a school must provide special education and, if necessary, related services to meet his/her unique needs. 34 C.F.R. § 300.17(a)(1). Special education includes instruction conducted in the classroom, at home, in hospitals and institutions, or in other settings, and it may include

instruction in physical education. 20 U.S.C. § 1401(a)(16)(A)-(B).

II. USE OF A STANDARD TO INTERPRET THE MEDICAL SERVICES EXCLUSION THAT FOCUSES ON THE INDIVIDUAL CASE AND CONSIDERS THE CONSTANCY, COMPLEXITY AND CRITICAL NEED FOR SERVICES IS CONSISTENT WITH STATUTORY AND REGULATORY LANGUAGE, THIS COURT'S DECISIONS, AGENCY INTERPRETATION AND THE APPROACH OF THE MAJORITY OF COURTS THAT HAVE ADDRESSED THIS ISSUE.

A. The statute and regulations do not provide clear guidance on the scope of the medical services exclusion.

One of the most controversial and possibly most expensive aspects of the IDEA is the related services mandate. The statutory definition of related services is:

> transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. § 1401(a)(17).

The regulations do little more than list additional examples of possible services, e.g., "school health services, social work services in schools, and parent counseling and training." 34 C.F.R. § 300.16(a). Not intended to be exhaustive, this listing is meant to provide examples of possible services. As stated in the comments to the regulations:

> The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

34 C.F.R. § 300.16, Note.

Recent amendments have added specific services to this list: assistive technology devices and services,[2] 20 U.S.C. §

[2] The regulations, 34 C.F.R. § 300.5, and the statute, 20 U.S.C. § 1401(a)(25), define assistive technology device as "any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities." *See* Elena Gallegos, *The Impact of Assistive Technology Devices on Special Education, Related Services and Program Modifications*, in SCHOOL LAW IN REVIEW 7-1 (NSBA 1995), for a more detailed discussion of this topic.

1401(a)(25), (26), and transition services,[3] 20 U.S.C. § 1401(a)(19), to the statute. In 1997 Congress amended the IDEA related services definition to include orientation and mobility services. Pub. L. 105-17, Title I, § 602, 111 Stat. 42, to be codified at 20 U.S.C.§ 1401(a)(22). In none of these instances has it changed or clarified the original exclusionary language which limits medical services owed to children served under the IDEA to those necessary for evaluation and diagnostic purposes.

The definition of medical services is the focus of this case. The regulations specifically list "school health services" and "medical services for diagnostic or evaluation purposes" in the examples of related services. 34 C.F.R. § 300.16(a) "School health services" are defined as "services provided by a qualified school nurse or other qualified person." 34 C.F.R. § 300.16(b)(11) "Medical services" are defined as "services provided by a licensed

[3] Transition service includes "post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." 20 U.S.C. § 1401(a)(19).

physician to determine a child's medically related disability that results in the child's need for special education and related services." 34 C.F.R. § 300.16(b)(4). Thus, neither the statute nor the regulations define excluded medical services.

Related services, thus, cover a myriad of support services, [4] as determined to be necessary for a student with disabilities to benefit from special education. Only medical services and individually prescribed equipment are excluded.

B. This Court's decision in *Tatro* does not compel use of the bright line physician/non-physician standard.

This Court in *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), devised a three-part test to determine whether

[4] Note also that the components of room and board plus transportation to and from a residential placement can also be considered a "related service." As put by one court, "That residential placement as sought by Douglas and Christopher may be available as a 'related service' under the Act is indisputable; . . . if residential placement is necessary in order for Douglas and Christopher to receive any educational benefits from special education, then under the EHA, the District must pay for the cost of that placement." *Christopher T. v. San Francisco Unified School Dist.*, 553 F. Supp. 1107 (N.D. Cal. 1982).

a school district is required to provide a particular service to a student as a related service: (1) the child must be "handicapped" so as to require special education; (2) the service must be necessary for the child to benefit from his or her special education; and (3) the service cannot be specifically excluded, i.e., medical or individually prescribed equipment.

Applying this three part test, this Court in *Tatro* found clean intermittent catheterization (CIC) to be a related service, not within the "medical service" exclusion. It promised this conclusion on the fact that "CIC is analogous to the type of service that school nurses have traditionally provided to students." *Tatro,* 468 U.S. at 893 – 94.

While one could conclude that Congress wanted "to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence...," *Tatro,* 468 U.S. at 892 - 93, it was also logical to conclude that "Congress intended to impose the obligation to provide school nursing services." *Id.* This Court did state that

services which must be provided by a physician are necessarily medical services. However, it did not necessarily limit medical services to only those provided by a physician and thus left the door open for consideration of other factors in making that determination. *Id.* at 894. This distinction was drawn by the Ninth Circuit: "The Court held only that services which must be provided by a licensed physician, other than those which are diagnostic or evaluative, are excluded and that school nursing services of a simple nature are not excluded." *Clovis Unified School Dist. v. California Office of Admin. Hearings*, 903 F.2d 635 (9th Cir. 1990).

C. The majority of courts addressing this issue have used a multi-factor analysis.

Several other courts have had to address services of a more complex nature than those at issue in *Tatro*. In these cases courts , based on the concerns expressed by this Court in *Tatro*, have crafted a definition of an excluded medical service by examining the complexity, frequency, and emergency nature of the services

provided. *E.g., Detsel v. Board of Educ. of Auburn*, 820 F.2d 587 (2d Cir.), *cert. denied*, 484 U.S. 981 (1987); *Granite School District v. Shannon M.*, 787 F. Supp. 1020 (D. Utah 1992); *Macomb County Intermediate School District v. Joshua S.*, 715 F. Supp. 824 (E.D. Mich. 1989); *Bevin H. v. Wright*, 666 F. Supp. 71 (W.D. Pa. 1987).

In *Detsel v. Board of Educ. of Auburn Enlarged City School Dist.*, 820 F.2d 587 (2d Cir. 1986), *cert. denied*, 484 U.S. 981 (1987), the court held that constant respiratory assistance was a "medical service" and thus not required from the school district. In *Clovis Unified School Dist. v. California Office of Admin. Hearings*, 903 F.2d 635 (9th Cir. 1990), the Ninth Circuit Court of Appeals held that an emotionally disturbed students' temporary hospitalization was a "medical service" and thus not the responsibility of the school district. In *Neely v. Rutherford County School*, 68 F.3d 965 (6th Cir. 1995), *cert. denied*, 517 U.S. 1134 (1996), the court rejected the argument that constant respirator care for a student was a related service under IDEA. These

decisions are consistent with other lower court decisions and state rulings. *E.g., Fulginiti v. Roxbury Tp. Public Schools*, 921 F. Supp. 1320 (D.N.J. 1996), *aff'd*, 116 F.3d 468 (3rd Cir. 1997); *Ellison v. Board of Educ. of Three Village Central School Dist.*, 597 N.Y.S.2d 483 (App. Div. 1993); *Granite School Dist. v. Shannon M.*, 787 F.Supp. 1020 (D. Utah 1992); *Spencerport Central School Dist.*, 16 EHLR 1042 (N.Y. Comm'r Educ. 1990); *Glen Rock Board of Educ.* 16 EHLR 1102 (N.J. Admin L.J. 1990). *Contra Macomb County Intermediate School Dist. v. Joshua S.*, 715 F.Supp. 824 (E.D. Mich. 1989); *Morton Community Unit School Dist. No. 709 v. J.M.*, 986 F. Supp. 1112 (C.D. Ill. 1997); *Skelly v. Brookfield LaGrange Park School Dist.*, 968 F. Supp. 385 (N.D. Ill. 1997).

D. Interpretive letters from the Department of Education support individualized determinations based on a multi-factor analysis to resolve the medical services exclusion issue.

The Department of Education has addressed the issue as well, in responses to inquiries. Continuing the policy of the statute to make individualized determinations of a student's needs the Department stated:

> A threshold issue raised by your inquiry is whether "one-to-one nursing services" to enable a disabled student to attend school would be considered an eligible "school health service", or an excluded "medical service" because the services are for purposes other than those that are "diagnostic and evaluative in nature." 34 C.F.R. 300.16(b)(4) and (b)(11). Courts that have addressed this issue have reached differing conclusions based on factors such as the nature and intensity of the nursing services required for a particular student and the level of skill required of the individual performing the services. If the care required is intermittent and could be provided by a regular school nurse, courts have generally held that the service is an eligible related service. . . . However, if the care required is continuous, courts relying on the private duty aspect of the services, generally have held that the service is an excluded medical service. [citations omitted]

Hehir Letter to Anderson, 211 EHLR 392 (June 24, 1986).

Use of a standard which focuses on the individual case and takes into consideration the constancy, complexity and critical need

for the services is not in violation of this Court's ruling in *Tatro* and would be consistent with the interpretation of the statute, the agency and a majority of the courts who have addressed this issue. Applying such a standard this Court could find that the constant, complex, critical medical care of the student in this case is an excluded medical services despite the fact that it does not have to be performed by a physician. As Petitioner's brief clearly demonstrates, case law and regulations in other contexts support the notion that medical services are not limited to those which must be performed by a physician.

III. SCHOOLS CURRENTLY LACK ADEQUATE SCHOOL NURSING SERVICES AND THE FINANCIAL RESOURCES TO EMPLOY THE ADDITIONAL HEALTH PROFESSIONALS NECESSARY TO FULFILL THE LOWER COURT'S INTERPRETATION OF THE MEDICAL SERVICES EXCLUSION.

The question of who must provide health related services often raises concerns. It is not clear that the statute and regulations would base the mandate of services totally on the title of the individual service provider. A comment to the regulations states:

> There are certain kinds of services that might be provided

> by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

34 C.F.R. § 300.16 Note.

In *Tatro* this Court indicated that school districts should not have to provide services that are "beyond the range of their competence" and have never been "part of the educational system." *Tatro*, 468 U.S. at 892 - 93.[5]

Cedar Rapids is a moderately large district with about 18,000 students, and might be able to muster the financial and human resources to undertake the lower court's mandate. It must be noted that it is not a "typical" school district. Eighty-eight percent of the 15,000 school districts in this country have less than 5,000 students, and 30% have less than 500 students. U. S.

[5] A broader question relevant to this case was raised during oral arguments in *Tatro* : "Well my question really is will the school have to employ somebody that they ordinarily wouldn't employ in order to carry out this procedure?" question from Justice White, Trans. of Oral Argument, p. 20, lines 2-4. "Well, if there were a school nurse in the building, that would solve the problem wouldn't it?" *Id.* at p. 23 l. 7 -9.

Department of Education, National Center for Education Statistics, *Common Core of Data, 1995-96.* These small school districts also fall under the mandate of this Court. They typically lack the specialized staff and resources to perform complex constant health services. Additionally, because of the economies of scale, costs in smaller districts will generally be even higher than those faced by larger districts such as Cedar Rapids.

The array of services currently provided by school nurses been set forth in the literature. See table below:

School Health Services

Administration of first aid
Administration of medication
Alcohol/drug screening
Formal cardiovascular screenings
Child abuse evaluation and follow-up
Prenatal testing
Health risk appraisal
Development of health component of IEP
Development of health component of IFSP
Evaluation for emotional/behavioral problems
Dental services
Tube feedings
Irrigations
Monitoring vital signs
Clean dressing changes
Sterile dressing changes
Collection/testing of blood samples
Administration or monitoring oxygen
Urinary catheterization
Physical exams
Processing Workmen's Compensation claims
School-based alcohol/drug treatment
Case management for chronic health problems
Complex nursing care to students with special health needs
Employee wellness programs
Annual physical exams and other primary health care services
Family counseling
Immunizations at school
Mental health counseling
Nutrition counseling
Physical fitness screenings
Screening (height, weight, vision, hearing)
Obtaining throat cultures

66 *Journal of School Health* 55, 57 (February 1996).

This listing should not be construed as an itemization of the services traditionally or typically provided by school nurses. While some of them, such as administration of basic first aid and medication, are common services routinely provided by school nurses, others reflect the increasing responsibilities being foisted upon schools to cope with the health needs of children to an extent that far outstrips the historic educational mission of schools.

Most school districts do not currently employ enough school nurses with sufficient expertise to provide complex constant medical services, nor do most have the resources to employ full-time school nurses assigned to only one school, much less one student. In fact it is most common for a district to employ a few nurses who are shared among a number of buildings.

In 1994, approximately 31,000 school nurses were employed within the over 15,000 public school districts nationwide. On the average, the national ratio of school nurses to students is 1:3,098 with the lowest average ratio in New Hampshire (1:486) and the highest in Tennessee (1:10,814). Nat'l

Assoc. of School Nurses, *National Survey of School Nurses* (1995). Unfortunately these data indicate that "the states with the fewest nurses in schools are frequently also struggling to cope with thte highest rates of poverty and growing student health needs." Annie E. Casey Foundation, *Kids Count* (1994).

This is compounded by the fact that not all school nurses would be able to perform the tasks required. The *Journal of School Health* reported in a survey of school districts, mostly with larger enrollments, that 91% employ some type of nursing staff. Most of these districts employ registered nurses, however, 36% of these districts indicated that the R.N. was the coordinator of the school health program. Thus, even if there were an R.N. on staff, that individual would not necessarily be available to provide direct services to students -- let alone constant services for one student. Further, 30.7% of the districts report using health assistants, with only 9.6% of these being certified health assistants. 66 *Journal of School Health*, at 57. Clearly, schools could not rely on the current work force employed to provide the constant, complex nursing

services at issue in this case, nor the full range of services that would be mandated by the lower court's bright line standard.

When one considers the full range of complex medical services which schools may be forced to provide if the Eighth's Circuit's ruling is upheld, the costs become overwhelming. Further, it is not just the direct costs providing the related services, but also the indirect burdens that attend them which concern school districts. Liability insurance and related needs cause costs to build further. This would be inconsistent with this Court's finding that Congress did not impose "a burden of unspecified proportions and weight" when it enacted IDEA. *Tatro,* 458 U.S. at 190 n.11

To provide a wide range of medical services, other programs -- direct educational programs – may be sacrificed. If so, the original intent of IDEA, to provide an education for children with disabilities, may ultimately suffer. As discussed by Petitioner, congressional intent is clear that local school board resources were intended to focus on educational costs and other governmental agencies were not relieved of their responsibility to provide

medical services.[6]

IV. SCHOOL DISTRICT BUDGETS CANNOT SHOULDER THE ADDITIONAL FINANCIAL STRAIN THAT THE LOWER COURT'S DECISION WOULD IMPOSE GIVEN THE ALREADY BURDENSOME COST OF SPECIAL EDUCATION

The court of appeals grossly misinterpreted the Individuals with Disabilities Education Act. If this ruling is allowed to stand, it will impose on school district who have met their obligations under the IDEA a substantial financial burden not contemplated by Congress and one that they can ill afford given the already tremendous costs of special education.

The obligation under the IDEA to educate children with disabilities is an enormously expensive proposition paid for primarily with state and local tax dollars. Since its original enactment, the costs have continually grown, more than doubling in one decade. In 1982, special education expenditures were

[6] Congress specifically stated that "medical services" were the responsibility of other governmental agencies:

> Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

$11.75 billion. In the 1992–93 school year, these costs rose to more than $24.25 billion. U.S. Department of Education, *16th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*. In the 1993-94 school year, special education costs continued to rise to more than $32 billion. T. Parrish, *Special Education Finance Past, Present and Future* (Center for Special Education Finance, 1996).

Local school boards have struggled to meet these rising costs. One report estimates that between 1967 and 1991 the percentage of school spending on regular education declined from 80% to 59% of total education dollars, while the percentage spent on special education during that time frame increase from 4% to 17%. Of net new money spent on education in 1991, regular education received 26% in contrast to 38% expended for special education. Rothstein, R. & K. Miles, *Where's the Money Gone? Changes in the Level and Composition of Education Spending* 7-8 (Economic Policy Institute 1995). This escalation has caused grave

20 U.S.C. §1412(e).

problems for public education. We, in a sense, have been forced "to rob Peter to pay Paul."

The differences between average per pupil expenditures in regular and special education is staggering. Average per pupil spending in the U.S. for 1994 was $5,325; and $5,483 in Iowa. National Center for Educational Statistics, *Common Core of Data* (1997). It is generally calculated that spending on special education is 2.28 times the spending on regular education. Center for Special Education, *What Are We Spending on Special Education in the U.S.* (Feb. 1998). This would bring the national average expenditure on special education during that year to $12,141 per pupil and Iowa's to $12,501. Here, Respondents are requesting that the school district assume an additional expense of $20,000 to $30,000 annually on this child alone. Pet. App. 53a.

In enacting the IDEA, Congress recognized the limited financial resources available to state and local education agencies to develop programs for children with disabilities. When IDEA was passed in 1975, Congress made a commitment to provide

states with 40% of the national average per pupil expenditure for each eligible child to be used to defray the "excess cost" associated with meeting the educational needs of children with disabilities.

Unfortunately, Congress has never even come close to meeting that promise. Funding for the program has never exceeded 12% of the national average per pupil expenditure. U.S. Department of Education, *Justification of Appropriations Estimate to the Congress Fiscal Year 1993* (1992). In fact, as can be seen from the table below, the federal share of special education costs has been declining while the local school district share has grown. This percentage of burden is compounded by the increased costs noted above.

FEDERAL, STATE AND LOCAL SHARES OF SPECIAL EDUCATION SPENDING

	Federal Share	State Share	Local Share
1982-83 School Year	8.3%	53.8%	37.9%
1987-88 School Year	7.8%	56.0%	36.2%
1993-94 School Year	7.1%	44.0%	49.0%

Sources: The 1982-83 data are from the U.S. Department of Education, Office of Special Education Programs Data Analysis

System (DANS). The 1993-94 data are from the CSEF Survey on State Special Education Funding System, 1994-95, and the Fourteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act. *Center for Special Education Finance, http://csef.air.org/faq3-4.html*

In light of the congressional failure to provide the state and local education agencies with adequate financial assistance to pay for the costs of special education, any judicial interpretations of the IDEA which inflicts additional obligations to pay for additional services fall inordinately upon already overburdened local public education budgets. Upholding the court of appeals decision would result in the siphoning of funds from school systems which have already provided appropriate programs, thereby causing an unjustifiable drain on an already limited amount of funds.

CONCLUSION

For the reasons stated above, Amicus respectfully requests this Court to reverse the decision of the Eighth Circuit Court of Appeals and adopt the multi-factored analysis (considering the nature, extent, complexity, urgency and burdensome nature of the medical tasks at issue) consistent with the Second, Fourth, Sixth, and Ninth Circuit Courts of Appeals.

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